



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

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Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

July 11, 2018

To all concerned parties,

**RE: New UST Notification Form, Deductible
Mechanisms, and COFAs**

Recently, the new underground storage tank (UST) rule (329 IAC 9) became effective. A portion of that rule was amended altering the mechanisms that could be utilized to meet the deductible for the Excess Liability Trust Fund (ELTF). The major change was elimination of the Tangible Net Worth Letter from 329 IAC 9-8-11(c). This change has caused some concern among the regulated community and this announcement clarifies IDEM's documentation requirements.

To begin, for purposes of compliance, IDEM will no longer request proof of the ability to pay the deductible in the normal course of business. Owners/operators will not need to provide this proof of the ability to pay the deductible unless they wish to do so voluntarily or IDEM specifically requests the documentation as required by rule. The current process built around this requirement is needlessly time-consuming yet yields little utility for the agency or the regulated community. IDEM will rely on a properly completed notification form wherein the UST owner and UST operator state reliance on ELTF as their financial responsibility mechanism required in accordance with 329 IAC 9-8. Upon receipt of such form, IDEM will issue a Certificate of Financial Assurance which is required by 40 CFR 280.101(d) for UST financial responsibility requirements if a state fund is used to satisfy the UST financial responsibility requirements. During an inspection, a failure to have a COFA or that required documentation for any of the other UST financial responsibility mechanisms required by 329 IAC 9-8 is a violation of the UST rules.

IDEM will no longer require owner/operator to establish proof of any of the mechanisms listed in 329 IAC 9-8-11(c) unless the owner/operator wishes to provide such proof or proof is specifically requested by the agency. In the alternative, IDEM will accept an affirmation, certification, or other written acknowledgment of the requirement to have the ability to pay the deductible (double deductible if more than 12 USTs are owned/operated by the same entity) from the owner/operator. This written documentation will be sufficient for IDEM to satisfy the 329 IAC 9-8-11(b).

The current notification form (State Form 45223) lists multiple variations of the ELTF option based on the different deductible mechanisms (Section G, subsections 6.A through 6.H). Until IDEM has an updated UST notification form approved (it is currently moving through internal agency review), an owner/operator can select any of the selections listed for ELTF. Further, until the Certification of Financial Responsibility can be incorporated into State Form 52884 (COFA Request Form), the current template in the instructions can be utilized, but specification of the mechanism will not be required.

Should you have any questions or concerns, please contact me (dlouks@idem.in.gov). Thank you.

Sincerely,

Douglas R. Louks
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Underground Storage Tank Branch
Office of Land Quality
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